

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE) Docket No. 18 C 7686
LION AIR FLIGHT JT 610 CRASH) and related cases
This Document Relates To:) Chicago, Illinois
All Actions) October 17, 2019
2:03 p.m.

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE THOMAS M. DURKIN

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1 (In open court.)

2 (Clerk places telephone call.)

3 THE CLERK: Good morning, everyone. This is
4 Case 18 C 7686, In re Lion Air Flight JT 610.

5 THE COURT: Sandy, what I'd like to do then if it will
6 work is everyone just stay on the line for about ten minutes.
7 I want to get some of these other cases done, and we'll call
8 the Lion Air case once a couple of these --

9 THE CLERK: Some of the others are by phone.

10 THE COURT: Oh. They're all on the phone, right?

11 THE CLERK: Every --

12 THE COURT: All of the other ones are on the phone?

13 THE CLERK: Some of the other cases are by phone.

14 THE COURT: Are there any that are not?

15 THE CLERK: Yeah, there's a few.

16 THE COURT: Okay. Let's try and get rid of them.

17 THE CLERK: Okay.

18 THE COURT: Dispose of them.

19 (The Court attends to other matters.)

20 THE CLERK: This is 18 C 7686, In re Lion Air
21 Flight JT 610.

22 THE COURT: All right. Good morning.

23 Let's start first with the people on the phone.

24 Please state your name for the record. And any -- if you speak
25 at all --

1 UNIDENTIFIED SPEAKER ON TELEPHONE: [Unintelligible.]

2 THE COURT: -- during this status, you need to say who
3 you are so that we can properly attribute what you're saying to
4 a particular name.

5 So let's have everyone introduce themselves from the
6 phone.

7 MR. KABATECK: Good morning, your Honor. Brian
8 Kabateck, spelled K-A-B-A-T-E-C-K, appearing on behalf of
9 various plaintiffs.

10 MR. HERRMANN: Charles Herrmann. We represent
11 44 victims, 24 filed.

12 MR. LINDQUIST: Mark Lindquist, also with Herrmann
13 Law.

14 MR. MONTROYA: Edward Montoya, plaintiffs, for several
15 decedents.

16 THE COURT: All right. Anyone else --

17 MS. INFANTE: Good morning --

18 THE COURT: -- on the phone?

19 MS. INFANTE: -- your Honor. Kris --

20 Kristina Infante -- that's I-N-F-A-N-T-E -- on behalf
21 of various plaintiffs.

22 THE COURT: All right. Sounds like that's everybody
23 on the phone.

24 Do -- Laura, do you need everyone in court to identify
25 themselves, or is there a sign-in sheet where -- do you want

1 everybody from left to right to identify --

2 COURT REPORTER: Off the record?

3 THE COURT: Yeah, let's go off the record.

4 (Off-the-record discussion.)

5 THE COURT: Okay. I spoke to the mediator, Judge
6 O'Connell. I received a report from him also. He reported
7 that there has been some progress on settlements, slow: some
8 settlements, some non-settlements, some further discussions
9 planned. He has not given me numbers, but he's given me a
10 fairly detailed description of what's been going on without
11 giving me the actual numbers of anything that settled or the
12 bid and the ask on the people where there's no settlement.

13 Your last status with me, or your last report to me
14 back in May, indicated you were going to have settlement
15 discussions starting in July. Now we're in mid- to late
16 October.

17 And by the way, I notice Mr. Webb here.

18 MR. WEBB: Good morning, your Honor.

19 THE COURT: Good morning.

20 Mr. Webb and I are not close personal friends, but we
21 were certainly -- I worked with him in the U.S. Attorney's
22 Office. We've seen each other professionally fairly regularly
23 at gatherings of U.S. Attorneys and other events.

24 I don't view it as a basis to recuse myself, but you
25 should all know that I've had a previous relationship with

1 Mr. Webb because of my employment when he was the U.S. Attorney
2 and I was an Assistant U.S. Attorney.

3 And we've tried cases against each other. We tried a
4 case together, except it pled out right before trial. So
5 that's my recollection.

6 MR. WEBB: Your recollection is correct, your Honor.

7 THE COURT: Okay. But Mr. Webb wasn't here before, so
8 I wanted to at least let you know the nature of my connections
9 with Mr. Webb.

10 Okay. So back to the report you filed in May. You
11 all agreed to cooperate in good faith, to have settlement
12 discussions. Parties agreed to go before Judge O'Connell.
13 There had been discussions at least scheduled to start in July,
14 and I know some have taken place and there are more scheduled.

15 Judge O'Connell was going to report to me per that --
16 per the report you filed with me, he was going to report if
17 you'd reached an impasse, and then Boeing was going to have ten
18 days to file their motion to dismiss on *forum non conveniens*
19 grounds.

20 Judge O'Connell didn't report to me there was an
21 impasse, but he said things are certainly moving slowly. The
22 crash occurred a year ago. Cases were filed in November. I
23 don't know what you want to report to me about the progress of
24 these discussions.

25 I don't know if anyone here -- the plaintiffs want to

1 proceed with discovery that doesn't relate to damages. I
2 understand damage discovery is something you've agreed to
3 informally exchange so that the settlement discussions can
4 proceed productively.

5 I don't know whether Boeing wants to file their motion
6 to dismiss on *forum non conveniens* grounds.

7 So you can report on all of that, and then I have a
8 few comments -- well, I have a number of questions. But let me
9 start first with how you want to proceed. Then I'll tell you
10 how I -- how I want to proceed.

11 I'll start first -- is there a representative of the
12 plaintiff that can speak for most of you?

13 MR. MARTINEZ-CID: I --

14 MR. BARTLETT: I think both of us can.

15 MR. MARTINEZ-CID: I think many of us can. But, your
16 Honor --

17 THE COURT: What -- state your name again.

18 MR. MARTINEZ-CID: Ricardo Martinez-Cid, Podhurst
19 Orseck.

20 I wanted to represent a few things. I think Austin
21 has a number of things he can say as well. I don't think -- I
22 don't think any of us can speak with one voice, but we all
23 pretty much speak with one voice regardless.

24 The Court has, I think, perceived the issue, which is
25 even though we are not at a technical impasse, there are a

1 number of cases that seem very likely headed to impasse. We've
2 made a little bit of progress. It's good that we resolved
3 17 cases, but that's of well over a hundred cases.

4 We still want to engage in this process. We are -- we
5 are just beginning this process on the Ethiopian Air cases that
6 my firm is heavily involved in as well.

7 I am the ESI liaison in Ethiopian Air, and so that's
8 why I wanted to bring to the Court's attention that there are
9 some great conveniences and efficiencies that can be had by
10 getting discovery going at the same time in this case because I
11 think we would all like to work with the plaintiffs in that
12 case to try to get one set of discovery going or at the same
13 time take depositions so that it's easier to schedule and we
14 don't have an issue with Boeing having to have two -- the same
15 people at two different places and get the same document
16 requests with just a few words off. So if we could get
17 discovery going, it would be greatly appreciated.

18 THE COURT: What kind of discovery? We have damage
19 discovery, we have liability discovery, and we have discovery
20 related to the *forum non conveniens* motion which I am virtually
21 certain is going to be filed by Boeing.

22 MR. MARTINEZ-CID: Liability discovery is what we see
23 as the important efficiency to be gained. That's what's going
24 on in the Ethiopian Air cases. As the Court's aware, under the
25 model discovery plan, there's -- there's a vast exchange of

1 information. And certainly as the Court touched on, we are
2 producing the damage discovery anyway as part of the
3 discussions that we've been having to get the case moving.

4 Regardless of Boeing's motion for *forum non*
5 *conveniens*, the discovery on the liability issues are going to
6 be very important, particularly to talk about all the issues
7 that come up in *forum non conveniens*, which is who are the
8 witnesses, who are the documents, where are the documents, what
9 language are they in, all those things.

10 The discovery that we are going to exchange, I
11 wouldn't -- I don't think it makes any sense to bifurcate and
12 try to limit it because of Boeing is already producing those
13 documents in -- in this case here in Chicago to --

14 THE COURT: Which case? In the Ethiopian --

15 MR. MARTINEZ-CID: In the Ethiopian Air case, right.
16 And it's the same certification of the MCAS system that is at
17 issue in both cases.

18 The -- frankly, the discussion that we are having
19 before Judge Alonso -- or we haven't had it yet. We're
20 trying -- we're going through the meet-and-confer process to
21 avoid it -- is that Boeing has not wanted to produce any
22 documents that date from the date of the Lion Air accident
23 forward.

24 So everything that they are agreeing to produce up to
25 today by definition is relevant to this accident because it all

1 predates this accident.

2 THE COURT: And you remind me, by the way. The
3 Ethiopian crash, I'm very much recused from that case -- not
4 that I have any of those cases in front of me, but my brother
5 works for Bob Clifford. I think they're both -- have filed
6 appearances in that case. And so I am not involved, of course,
7 in that case. They're not in front of me. But I raise that as
8 you start discussing what's going on in a different case just
9 so you're aware of that. I think most of you are anyway, but
10 I'll put it on the record that my brother is -- has an
11 appearance in that case, and his law firm does too.

12 Okay. All right.

13 MR. BARTLETT: Your -- I'm sorry.

14 THE COURT: Go ahead.

15 MR. BARTLETT: Well, I was just going to say -- this
16 is --

17 THE COURT: And state your name for the record.

18 MR. BARTLETT: Sure. Austin Bartlett of BartlettChen.
19 Represent several plaintiffs in this case, your Honor.

20 I echo what Mr. Cid has said. I would say, as it
21 sounds like Judge O'Connell has reported to you, that in my
22 case, for example, we're scheduling a fourth mediation, and
23 additional mediations are scheduled for late October and early
24 November. And so from my position, I echo everything Ricardo
25 said.

1 I would suggest allowing the parties an additional
2 30 days to exhaust settlement efforts just given the pending
3 mediations, but obviously there's room for divergent views on
4 that point.

5 MR. HART: Your Honor, Steven Hart -- Hart,
6 McLaughlin & Eldridge -- for 11 victims.

7 We -- there is some frustration with the pace of
8 settlement negotiations. And your Honor has pointed out that a
9 year has passed. And so we're anxious on behalf of my clients
10 to move forward. It does not mean that we want to abandon any
11 efforts to resolve the matter. It does mean that we think it
12 is time to move forward with the substantive issues in the
13 case.

14 If that means that Boeing plans to file an FNC, you
15 know, whether they file it today or 10 days from now or even
16 30 days as some other plaintiffs' counsel are suggesting, we
17 would ask this Court to set a date certain for them to do so.

18 I think it's highly unlikely that this matter is going
19 to be resolved in the near future as to all plaintiffs.

20 THE COURT: All right. Anyone else need to add
21 anything else from plaintiffs that hasn't been said before?

22 Mr. Demetrio.

23 MR. DEMETRIO: Yes, your Honor. Good morning. On
24 behalf -- I represent the Gitelson matter.

25 And I don't necessarily agree with a number of things

1 that were said by some of my fellow plaintiffs' attorneys.
2 However, I can report that, you know, our session with Judge
3 O'Connell was substantive but nowhere near completion and that
4 he urged continuing dialogue. And I think that's fine.

5 I am of the mind that doing liability discovery is
6 beneficial. I do not agree that this case should be in any way
7 melded with Ethiopian Air. There are different issues involved
8 in this case. That's my perspective. And that's my
9 perspective based upon my years of practice before this Court
10 and others.

11 You know, and whatever the Court decides as far as a
12 schedule and what the -- I'm sure the parties can all get
13 together and get everything completed in a timely fashion.

14 MR. MARTINEZ-CID: And, your Honor, just to clarify.
15 I understand Mr. Demetrio's position, and I think maybe I
16 expressed myself poorly. I am not suggesting that these cases
17 be consolidated or joined. I'm suggesting that we take
18 advantage of efficiencies for the parties that are inherent in
19 the process because many of the same issues -- though not all,
20 of course, and there are going to be very individualized
21 issues -- many of the issues are going to be overlapping. And
22 so discovery can be efficiently done for both Boeing and for
23 plaintiffs by working together where possible.

24 THE COURT: All right. Anything else from plaintiffs?

25 MS. WISNER: Your Honor, if I may.

1 MR. HERRMANN: Your Honor, this is --

2 THE COURT: Go ahead.

3 MR. HERRMANN: -- Charles Herrmann.

4 THE COURT: All right.

5 MR. HERRMANN: I'm on the phone.

6 I simply want to state that I agree pretty much with
7 what everybody has said. But in my view, it is the divergence
8 between plaintiffs and defense attitude toward the FNC motion
9 that is the biggest obstacle to us getting this case settled.
10 And I think it should be resolved. We probably could make
11 great progress at that point.

12 THE COURT: Well, I don't -- I didn't expect you'd
13 agree on a *forum non conveniens* motion. I'm sure there is a
14 divergence on it, and I'm sure you each have your own views as
15 to the strength or weaknesses of it. I'm going to speak to
16 that in a minute.

17 But I frankly think the uncertainty of how the ruling
18 is going to be is more likely to induce settlements than the
19 certainty of it. But I'll speak to that in a minute.

20 First I want to exhaust what the plaintiffs have to
21 say that isn't already covered by what someone else has said.
22 Then I want to hear what Boeing has to say.

23 Ma'am, state your name, please.

24 MS. WISNER: Alexandra Wisner, your Honor, on behalf
25 of the Saputra plaintiffs, 19 decedents.

1 Your Honor, for what it's worth, plaintiffs in the
2 Saputra case support the proposition of Mr. Bartlett in coming
3 back in 30 days and to assess where we are as we are one of the
4 firms that does have a mediation scheduled for later this
5 month.

6 THE COURT: All right. Okay.

7 Anything else from the plaintiffs that hasn't already
8 been covered? I'm assuming you all adopt one or either of the
9 positions of let's move ahead with discovery or let's move
10 ahead with the motion or let's hold off for 30 days to let the
11 mediation process play out.

12 Anybody else have anything to add?

13 Okay. Let's hear from Boeing.

14 And I'm sorry, ma'am. You were speaking up -- or you
15 were standing up. Did you want to add something, or has it
16 been covered?

17 MS. KELLY: Good morning, your Honor. Monica Kelly on
18 behalf of about 70 plaintiffs.

19 I agree with what my co-counsel Austin said and also
20 what Alexandra Wisner said. So I was going to say something
21 else, but since she said it, I'm not going to say anything
22 else.

23 THE COURT: Thank you. Okay.

24 All right. Let's hear from Boeing.

25 MR. SHULTZ: Good morning, your Honor. Mack Shultz on

1 behalf of Boeing.

2 As stated in the joint report that was submitted back
3 in May, Boeing is committed to trying to negotiate in good
4 faith settlements for full compensatory damages under the
5 applicable law and as determined by the facts and circumstances
6 of each individual case.

7 The parties agreed to a mediation process before Judge
8 O'Connell. We have met on I believe 16 different days with
9 different firms since July. We have settled 17 cases. I've
10 traveled out to Chicago for all of the mediations, and on every
11 trip that I've come out, we've made additional progress and
12 settled additional cases.

13 The parties are negotiating in good faith. The
14 plaintiffs have produced a quite substantial amount of damages
15 discovery, to their credit, given the difficulty of getting
16 information from Indonesia and documents from Indonesia. In
17 some cases, additional documents need to be obtained or
18 additional information to help evaluate the cases.

19 There are about 50 or 60 cases that we have not yet
20 gotten to, for a variety of reasons, to have even initial
21 mediation discussions, let alone full substantive discussions.
22 That's out of a set of about, by our count, 153 total claims.
23 Not all of those claims have been filed before your Honor.
24 There are a number of unfilled cases which we are also willing
25 to discuss and try and mediate before they're filed with the

1 Court.

2 It is Boeing's belief that the mediation process
3 should continue to play out. We do not believe we are at an
4 impasse on any of the negotiations. And we agree with Judge
5 O'Connell, and we agree with the perspective of giving the
6 parties additional time to try and make further progress.

7 THE COURT: Have you turned over documents in the
8 Ethiopian Air crash case?

9 MR. SHULTZ: I believe our first substantive
10 production of documents occurred yesterday in terms of
11 electronic documents that were produced in conjunction with
12 Boeing's initial disclosures in that case.

13 THE COURT: All right. Do you object to turning over
14 similar documents in this case?

15 MR. SHULTZ: The only caution I have, your Honor, is
16 in some of the *forum non conveniens* cases, one of the factors
17 to consider in whether to dismiss the cases is essentially how
18 much has already happened in the current forum.

19 And I don't think we would object to producing the
20 same types of documents -- or the same documents in this case
21 that we -- that we're producing in Ethiopian, but we wouldn't
22 want our willingness to cooperate with that process to
23 prejudice an FNC motion in the future.

24 THE COURT: All right. Would the plaintiffs view
25 their turning over documents in this case -- which I've put a

1 halt on at the request of the parties. But would the
2 plaintiffs attempt to use that in opposition to a *forum non*
3 *conveniens* motion?

4 MR. MARTINEZ-CID: To be clear, your Honor, what I
5 would want to clarify is we -- the fact that they have already
6 been turned over in the Ethiopian Airlines would still very
7 much be a part of our opposition.

8 Now, the fact that they have been also produced in
9 this -- in this case, speaking for myself --

10 MR. BARTLETT: No.

11 MR. HART: No.

12 MR. MARTINEZ-CID: -- we would not use that, your
13 Honor.

14 THE COURT: All right. Yeah, the fact it's turned
15 over -- I mean, it's same thing. But the fact it's been turned
16 over in the Ethiopian case is a fact or will be a fact when you
17 do it. And I'm sure plaintiffs will raise that, and they're
18 entitled to.

19 But turning it over here seems like nothing more than
20 a mouse click and having an extra copy made. If there's an
21 appropriate protective order, I don't understand if in the end
22 settlement discussions fail that we have further delay where
23 you're already turning it over in one case. I'd feel
24 differently if it weren't turned over in either case.

25 I don't know if Mr. Webb wanted to add something.

1 Looked like you were about to say something.

2 MR. WEBB: No, we're fine.

3 THE COURT: Okay. So as long as plaintiffs agree on
4 the record now -- and if anyone disagrees, state it on the
5 record now. As long as plaintiffs agree that turning over the
6 documents being turned over in the Ethiopian crash -- air
7 crash, having those turned over in this case, that fact will
8 not be used to oppose a *forum non conveniens* motion, I'll order
9 that to be turned over.

10 Is there any objection to that -- under that condition
11 by anybody on the plaintiffs' side?

12 MR. DEMETRIO: Michael Demetrio, your Honor.

13 The only thing I'm cautious about is that's sort of a
14 broad statement as to will not be used. The fact of turning it
15 over certainly I would not have any objection to. The fact --
16 and, again, I haven't seen a motion filed, so it's sort of
17 tough to comment --

18 THE COURT: Their original --

19 MR. DEMETRIO: -- on what --

20 THE COURT: They filed -- they filed a de facto motion
21 early on when they said what the case law was on a *forum non*
22 *conveniens*. You're not going to be -- most of you are all in
23 these cases that were --

24 MR. DEMETRIO: Well, that's --

25 THE COURT: -- decided earlier.

1 MR. DEMETRIO: -- the other point -- I'm sorry.
2 That's the other point I was going to make. There are some of
3 us, myself included, that are involved in both actions. So,
4 you know, I --

5 THE COURT: Well, I'm talking about the -- the Supreme
6 Court case, the Seventh Circuit case, and the numerous district
7 court cases in this district that have decided *forum non*
8 *conveniens* motions. Many of you -- you're at Perkins, correct?

9 MR. SHULTZ: Correct.

10 THE COURT: You're in all of them. Not the Supreme
11 Court case, but in most of the others. And many of the
12 plaintiffs' attorneys here were involved -- some of the firms
13 were involved in some of the other cases before Judge Aspen,
14 Judge Der-Yeghiayan, Judge Lindberg, and the Seventh Circuit
15 case. And these are well-known cases to anybody studying this
16 issue. And I know you're all involved in those.

17 So you don't have to see their motion to know what
18 it's going to say because in their original -- they put a
19 motion out seeking to stay discovery, and in it they talked
20 about the *forum non conveniens* issue and in some length.

21 So I don't think there will be a surprise,
22 Mr. Demetrio, what their motion looks like. There are contours
23 of it that will certainly be particular to this case, but the
24 overall law itself is pretty clear, and I'm going to get to
25 that in a minute.

1 But if there is a reluctance to agree with what I just
2 said as the condition for turning it over, then what I'd
3 suggest you do is reach an agreement privately by way of a
4 document that has the language you all can agree to, and then
5 you can turn it over.

6 If you can't reach agreement, come back. But maybe
7 that's the best thing to do. Come up with language that Boeing
8 won't be prejudiced by turning it over in a case -- because
9 they turned it over in this case.

10 Of course these documents are here in the United
11 States. They're being turned over in the Ethiopian Air crash
12 case. It's a distinction without a difference, as far as I'm
13 concerned. But if there's a language issue, work it out and
14 reach a private agreement. If you can't, bring it back to me.

15 MR. BARTLETT: Your Honor, I think we actually
16 probably have agreement. I think all that Mr. Demetrio --

17 Correct me if I'm wrong. I think all that you're
18 saying is the contents of the documents that are turned over,
19 if there's something in there that we can use to our benefit
20 for *forum non conveniens*, we wouldn't be prohibited from citing
21 that. I --

22 THE COURT: Oh, no.

23 MR. BARTLETT: I believe that's what you're --

24 THE COURT: Of course not.

25 MR. DEMETRIO: Substantially, Austin is actually

1 correct.

2 THE COURT: Oh. Then I misunderstood, Mr. Demetrio.

3 MR. DEMETRIO: And, again, I was speaking -- it's not
4 almost fair for me to speak because I have the documents
5 available to me.

6 THE COURT: Yeah. No, of course you can use those
7 documents.

8 MR. BARTLETT: So I think that there's -- with that
9 said, then I think that there's agreement, and let's get the
10 documents turned over.

11 THE COURT: And Boeing agrees they can use the
12 contents of the documents to oppose your motion.

13 MR. SHULTZ: That -- that's certainly -- I was not
14 suggesting otherwise, your Honor.

15 THE COURT: All right. Then go ahead and turn them
16 over with that agreement.

17 MR. SHULTZ: And just to be clear, your Honor, we'll
18 need to work out a protective order in this case. I assume we
19 can work out a protective order that is similar, if not
20 identical, to what was reached with the parties in Ethiopian.
21 But it's not the same lawyers, and we haven't had -- all the
22 same lawyers, and we haven't had that discussion in this case
23 yet.

24 THE COURT: Sure. Once you work out a protective
25 order, you can turn it over. Use the same schedule you're

1 using with Judge Alonso so that neither -- you're not jumping
2 ahead and -- this is meant to be something presumably fairly
3 easy for Boeing to do because it's just an extra copy.

4 MR. SHULTZ: Understood, Judge.

5 THE COURT: Multiple copies. But practically
6 speaking, it's not additional work than the work you're already
7 doing to provide the documents in the Ethiopian crash.

8 Okay. Couple questions I have. First, you mention
9 there are 153 total claims. Is that the number of the
10 decedents?

11 MR. SHULTZ: That is our count. There were 189 people
12 on the plane, your Honor. There are 153 decedents for whom
13 we've received notice that they are represented by a U.S. firm.
14 And there are at our count 117 decedents represented in the
15 cases that are filed and all before your Honor.

16 I will caution it is difficult to be precise and
17 accurate because the names of decedents are sometimes not just
18 spelled differently but written differently and because there
19 are occasionally shifting representations for a given family on
20 the plaintiffs' side.

21 THE COURT: Okay. Are there cases pending in any
22 court other than mine?

23 MR. SHULTZ: We are not aware of any, your Honor.

24 THE COURT: Are plaintiffs available -- aware of any?

25 MR. HART: No.

1 MR. DEMETRIO: No, your Honor.

2 THE COURT: Okay. All right.

3 Another question I have, is there an NTSB or
4 Indonesian safety authority report that is being prepared? I
5 assume something's being prepared. Have any been completed?

6 MR. SHULTZ: The Indonesian investigators are leading
7 the official investigation into the Lion Air accident. They
8 have publicly stated that they expect to issue their final
9 report by the first anniversary of the accident, which means it
10 should be issued later this month, your Honor.

11 THE COURT: All right. And by them taking the lead,
12 does that mean there won't be a separate NTSB report?

13 MR. SHULTZ: The NTSB is a party to the Indonesian
14 investigation. So the official report will come from the
15 Indonesians.

16 THE COURT: How about Boeing? Are they preparing a
17 report that's going to be a public report?

18 MR. SHULTZ: No. Boeing is acting as a technical
19 adviser to the NTSB, providing support as requested by the
20 investigation.

21 THE COURT: All right. And I'm not asking for what
22 you're doing internally, but are you doing something that you
23 know -- internally that is going to be disclosed publicly that
24 you know of right now?

25 MR. SHULTZ: I'm unaware of any process like that,

1 your Honor.

2 THE COURT: All right. Is Lion Air doing any type of
3 report?

4 MR. SHULTZ: I can't speak for Lion Air. They would
5 be a party to the Indonesian investigation. And I assume they
6 would -- they're in a slightly different capacity because
7 they're an Indonesian company. But I don't know whether
8 they're doing anything separate from that investigation.

9 THE COURT: And that was -- leads to my next question.
10 Does Lion Air have any presence in the United States?

11 MR. SHULTZ: We are -- I don't believe they have any
12 operations in the United States or that they fly to the United
13 States.

14 THE COURT: And they are an Indonesian company.

15 MR. SHULTZ: Yes.

16 THE COURT: All right. Were all of the decedents
17 citizens or residents of Indonesia?

18 MR. SHULTZ: 187 of the 189 were Indonesian. My
19 understanding is that the captain of the aircraft was from
20 India and that there was one passenger from Italy. As far as
21 we know, those families are not represented in the U.S.
22 litigation.

23 THE COURT: All right. And any of the actual
24 plaintiffs -- which are obviously family members or
25 representatives of estates. Are any of those, as far as you

1 know -- and this -- plaintiffs may know this better --
2 residents or citizens of the United States?

3 MR. SHULTZ: I believe in some cases, and a small
4 number of cases, a U.S. citizen has been selected as the
5 special administrator of the estate. But I don't believe there
6 are any -- I guess what I would term as primary claimants,
7 family members of the decedents, who are U.S. citizens.

8 THE COURT: All right. Are the -- do you know at this
9 point whether any of the maintenance crews or other support
10 personnel in Indonesia are employees of Lion Air or some other
11 company?

12 MR. SHULTZ: Based on the factual report that was
13 issued early on and press reports, your Honor, which are all
14 I'm able to speak to, I believe there was a contractor that
15 provided maintenance for Lion Air, and I believe that is also
16 an Indonesian company. But I expect that will be clarified in
17 the final report.

18 THE COURT: All right. Have any lawsuits been filed
19 in Indonesia?

20 MR. SHULTZ: Not to our knowledge, your Honor.

21 THE COURT: And if any of the answers by the Boeing
22 representative -- any plaintiffs know something to the
23 contrary -- because he's not -- he's stating this based on his
24 knowledge. If you know something different, feel free to
25 express it.

1 MR. BARTLETT: Your Honor, I don't know if this is
2 different. There's three things that I would just briefly
3 supplement in response to the Court's questions. The Court
4 asked whether any reports have been published. The NTSB
5 actually recently did publish a report recommending significant
6 changes to both the FAA and Boeing regarding a variety of
7 subject matters.

8 In addition, there's an international group of
9 experts -- I think the acronym is JATR, J-A-T-R -- that just
10 issued I believe an 80-page report, again, with significant
11 recommendations for both the Federal Aviation Administration
12 and I believe also The Boeing Company.

13 With respect to the Court's inquiry about Lion Air,
14 its copilot has sued in this forum. So, obviously, Boeing can
15 file a complaint for contribution against the copilot if they
16 believe pilot error is an issue. So I wanted to point that out
17 to the Court.

18 The other thing is --

19 THE COURT: Let me stop -- the copilot --

20 MR. BARTLETT: Yes.

21 THE COURT: -- is an Indonesian citizen?

22 MR. BARTLETT: That is correct.

23 THE COURT: All right. And he filed in this
24 jurisdiction?

25 MR. BARTLETT: That is correct.

1 THE COURT: Who has the case, if you know?

2 MR. WRONA: I do.

3 THE COURT: Okay. And what judge --

4 COURT REPORTER: Who was speaking?

5 MR. WRONA: John Wrona on behalf of the family of
6 Harvino, who was the copilot and obviously died.

7 THE COURT: And has that case been consolidated or
8 transferred to me, or is it in front of another judge?

9 MR. WRONA: Yeah. It was filed in December and has
10 been here since then.

11 THE COURT: Okay. Very good.

12 MR. BARTLETT: So I wanted to point that out to the
13 Court.

14 The other thing I would point out is that it's very
15 common between an aircraft manufacturer such as Boeing and an
16 airline for there to be a contract which has contractual
17 indemnity provisions that Boeing could probably avail itself to
18 to sue Lion Air potentially here. I don't know. I haven't
19 seen the agreement. Certainly that's something that the
20 plaintiffs will be looking for.

21 So my only point is is that there could be contours
22 that we -- at least from the plaintiffs' side -- that need to
23 be further explored. So I just wanted to add those remarks for
24 the Court's benefit.

25 THE COURT: All right. Well, the reason for my

1 questions -- I'm sure it's obvious to everyone -- is Lion Air
2 even amenable to service and jurisdiction here in this court?

3 MR. BARTLETT: Right.

4 THE COURT: Is Boeing capable of impleading them here?

5 MR. BARTLETT: Right.

6 THE COURT: Or are you capable of suing them if it
7 turns out that pilot error was one of the causes of the crash?
8 Which presumably the Indonesian safety authority report may
9 address. Even if they don't say it was pilot error, it's
10 certainly Boeing's right, I suppose, based on their view of the
11 facts to allege pilot error.

12 And these pilots were employed by Lion Air, correct?

13 MR. BARTLETT: That is correct. And they're right
14 here. So that is absolutely correct.

15 Your Honor, I forgot. There was one other question
16 that you asked, about was there any maintenance activities or
17 connection here, and that reminded me that indeed, there is a
18 U.S. entity called Xtra, X-T-R-A, Aerospace, an entity in
19 Florida that I believe supplied the overhauled angle of attack
20 sensor to Lion Air.

21 Haven't seen the final report. That's my
22 understanding from press reports.

23 And so certainly that is another U.S. entity, in
24 addition to other U.S. entities that the plaintiffs will
25 likely -- or at least are evaluating whether to add into this

1 suit if we -- if we do reach an impasse.

2 THE COURT: All right. A couple other questions.
3 Where are all the documents from Boeing? Not -- well, the
4 majority of the design and manufacture documents. Are they out
5 in Washington State?

6 MR. SHULTZ: They're primarily in Washington State,
7 your Honor.

8 THE COURT: All right. Just give me a moment to just
9 make sure I've asked all the questions I want to ask.

10 All right. A couple comments. I'm going to allow
11 another 30 days to pass and allow Judge O'Connell to continue
12 his what appears to be tireless work on this case. He
13 mentioned to me he may be involved in the Ethiopian crash
14 mediations to the extent they take place. So I don't know how
15 one person can do all that, but Judge O'Connell's a very
16 experienced and capable mediator, was an experienced and
17 capable judge. So if anybody can do it, he can. But I'll
18 allow another 30 days before you come back to talk about that.

19 I did, though, take the opportunity to reread a number
20 of the cases that I will admittedly say are not necessarily all
21 the cases the plaintiffs will bring to my attention. But you
22 can't read the various -- the *Piper Aircraft* case by the
23 Supreme Court, the Seventh Circuit case in *Clerides*, the
24 *Patricia* case here in the Northern District with Judge
25 Der-Yeghiayan, and then, in my mind, most importantly, the --

1 the *Air Crash* -- it's called *Air Crash Disaster Over Makassar*
2 *Strait in Sulawesi*, which involves Indonesia, before Judge
3 Aspen. You can't read these cases without coming away from it
4 with the impression is the law is pretty -- pretty favorable to
5 moving this case out and back to Indonesia.

6 I haven't ruled. I'm not ruling. And don't take from
7 my comments I've -- I've -- I'm making any kind of ruling. You
8 have a right -- they have a right to file their motion. You
9 have a right to file your opposition to it. There may be
10 factors that you develop that you can point out meaning the
11 case should stay here.

12 I do know that I'm required to weigh a variety of
13 public and private interest factors, and it's committed to my
14 discretion. I know it won't be the last word likely whatever
15 way I rule. If I dismiss the case, there will likely be an
16 appeal to the Seventh Circuit. If I deny it, there will be a
17 request for an interlocutory appeal, which I don't know whether
18 I'd grant, but there'll be a request for that. But it's very
19 possible the Seventh Circuit, case of this magnitude, will have
20 the last word.

21 But it is a heavily weighted consideration by the
22 Court where they look to see whether I abused my discretion
23 when I weighed these factors. And my questions, which I'm sure
24 were plainly obvious to you, all go to different factors and
25 considerations these various judges and appellate courts all

1 looked at in deciding this.

2 So keep in mind when you go to these mediations that
3 I -- it's not a winner for Boeing because I haven't decided a
4 motion. Don't have one in front of me. But plaintiffs should
5 read these cases carefully and make sure you understand the
6 risks of -- of going forward with briefing on this.

7 I -- you'll tell me why these cases don't say what
8 they say or why your case is distinguishable from that or
9 there's other cases that are more appropriate than these. And
10 I'll listen to you on that, and you may be right. But you
11 can't read these cases without understanding that Boeing's
12 motion will be a very serious motion.

13 So go back to Judge O'Connell if you want to settle.
14 Try and get your settlements done. I'm sure the landscape as
15 to demands and offers are going to change, I would expect
16 significantly, based on my ruling to the detriment of Boeing
17 and the benefit of plaintiffs or vice versa.

18 Sometimes the uncertainty of knowing what's going to
19 happen is the best way to get a settlement. But once the
20 certainty is there, once you start briefing, I'll make a
21 decision. And I would be shocked if the landscape doesn't
22 change significantly to the advantage of one side and
23 disadvantage of another if you go back to Judge O'Connell after
24 I rule on the motion.

25 So do with that what you wish. I don't think I'm

1 telling anybody anything they didn't already know, but now it's
2 on the record.

3 We'll give you a status in 30 days. If I hear from
4 Judge O'Connell before that that there is a significant impasse
5 as to certain plaintiffs where there is no chance of a
6 settlement in his estimation, I'm not going to likely wait for
7 everyone else to continue their discussions. If there's an
8 impasse and there's some plaintiffs that are not going to
9 settle and -- then I'm going to ask Boeing to start -- give me
10 a date where they're going to file their motion. We'll set a
11 briefing schedule.

12 If there's discovery that is necessary for the *forum*
13 *non conveniens* motion, I'll hear any requests made by the
14 plaintiffs to conduct that discovery, or defendants, and that
15 will be worked into any briefing schedule.

16 But if all dozens of you can't agree, the people that
17 want the case to go forward, it will go forward. And the way
18 it's going to go forward I expect, unless Boeing tells me
19 differently, is they're going to file a motion for *forum non*
20 *conveniens*.

21 So I'll give you 30 days to figure out who is doing
22 what, but I'm not going to wait for people who are trailing on
23 settlement because either they or Boeing isn't moving fast
24 enough for people who want to insist the case go forward. The
25 plaintiffs have a right to have their case decided, and,

1 frankly, this case can't go forward until we decide where it's
2 going to go. That's a critical issue. Either it belongs here,
3 or it belongs in Indonesia. And that has to get decided fairly
4 swiftly.

5 So any questions? First from plaintiffs.

6 MR. HART: No.

7 MR. MARTINEZ-CID: Your Honor, I would have one slight
8 request, which --

9 THE COURT: Yes.

10 MR. MARTINEZ-CID: -- is the Court mentioned another
11 status conference in 30 days. If it works with the Court's
12 calendar, we would request that it be on November 21st, which
13 is when -- where many of us are already going to be traveling
14 into the district for the Ethiopian Air status conference.

15 THE COURT: Does that work, Sandy?

16 THE CLERK: Well, that's the continuation of the
17 evidentiary hearing, plus you're out that afternoon.

18 THE COURT: We may have to do it -- you said you're in
19 for the other case?

20 MR. MARTINEZ-CID: Yes, on the 21st. But if the Court
21 could then do the 20th or 22nd, but to try to take advantage of
22 one trip. Of course, if it doesn't work with the Court's
23 calendar, we will --

24 THE COURT: No, I just have some hearings. We might
25 start a little early.

1 THE CLERK: Do you want to do it, like, at 8:30 or
2 something?

3 THE COURT: Yeah, if that works.

4 What time are you before Judge Alonso?

5 MR. MARTINEZ-CID: 9:00 a.m., I believe, your Honor.

6 MS. WISNER: Yes.

7 MR. MARTINEZ-CID: 9:00 a.m.

8 THE COURT: Well, I don't think there's going to be
9 anything that's going to take more than half an hour to
10 discuss. Why don't we do it at 8:30 on the 21st, if that works
11 for everybody.

12 MR. SHULTZ: That's fine with Boeing, your Honor.

13 THE COURT: Okay. How does that work for plaintiffs?

14 MR. BARTLETT: Thank you, your Honor.

15 MR. HART: Yes.

16 THE COURT: Okay. We'll do it at 8:30 on the 21st.

17 Anything else then from plaintiffs on any of the
18 comments I've had or any things we've discussed?

19 MR. HART: No, your Honor.

20 MR. BARTLETT: No.

21 THE COURT: Anything from defendants?

22 MR. SHULTZ: No, your Honor.

23 THE COURT: Okay. Thank you all.

24 MULTIPLE COUNSEL: Thank you, Judge.

25 (Concluded at 10:05 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

/s/ LAURA R. RENKE

October 23, 2019

LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter